

**Crown Cork & Seal Company, Inc. and Martin Rodriguez.** Case 16–CA–18316

July 20, 2001

**DECISION AND ORDER**

**BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN, TRUESDALE, AND WALSH**

The principal issue presented in this case is whether the judge correctly found that seven employee committees do not exist for the purpose of “dealing with” the Respondent and therefore do not constitute “labor organizations” within the meaning of Section 2(5) of the Act.<sup>1</sup> Having carefully reviewed the entire record in light of the General Counsel’s exceptions and the parties’ briefs, we conclude that it supports that the judge’s key finding that the committees are not statutory labor organizations. Because labor organization status is a necessary element of a violation of Section 8(a)(2), we adopt the judge’s recommendation that the complaint be dismissed in its entirety.

**I. FACTUAL BACKGROUND**

The relevant facts can be summarized as follows. The Respondent employs approximately 150 employees at its aluminum can manufacturing plant in Sugar Land, Texas. Ever since the plant opened in 1984, a system of employee management has been utilized known as the “Socio-Tech System.” The central purpose of the Socio-Tech System is to delegate to employees substantial authority to operate the plant through their participation on numerous standing and temporary teams, committees, and boards (collectively committees). There was no union organizational activity occurring at the time the Socio-Tech System was adopted or at the time of the events in issue here.

The seven committees discussed below are alleged to be employer-dominated labor organizations. All seven committees make decisions by a process of discussion and consensus. If a member of a committee cannot join in a consensus, he abstains on the issue. The management members of a committee have no greater authority than other committee members.

**A. The Four Production Teams**

*Production Teams* A, B, C, and D are self-managed work groups that lie at the heart of the Socio-Tech System. Every employee in the plant participates on one of these teams. Each team is made up of 33 members: 1 team leader (a member of management) and 32 “produc-

tion technicians” (production and maintenance employees).

Crediting the testimony of the plant manager, Rich De Young, the judge found that the four production teams “decide and do” on a wide variety of workplace issues, “including production, quality, training, attendance, safety, maintenance, and discipline short of suspension or discharge.” For example, the teams have the authority to stop the production lines without management approval. With respect to quality issues, De Young testified that if team members working in the shipping area were concerned that scratched cans may have been shipped to a customer, “they’re empowered to call up the customer and stop that delivery and turn it around.” Regarding training, the teams have the authority to decide which members are given formal and informal training. The production teams administer the plant’s absentee program, deciding whether to grant a team member’s request for time off and whether an absence is excused or unexcused.

With respect to safety, the production teams have the authority to investigate accidents and correct safety-related problems. For example, Plant Manager De Young testified that production teams would correct the problem of a piece of machinery “eating people’s fingers” by building and installing a guard without further review by anyone else in the plant. Teams take this kind of action “time and time again.”

The production teams decide what disciplinary action to take against a team member failing to meet team norms with respect to performance or behavior. The team can counsel the member and, if necessary, require the member to enter into a “social contract.” A “social contract” can be verbal or written and is designed to modify the member’s behavior. If the social contract does not have the desired effect and the team believes that suspension or discharge is warranted, the decision is in the form of a recommendation to the Organizational Review Board discussed below.

**B. The Organizational Review Board; the Advancement Certification Board; and the Safety Committee**

These three committees exist at one administrative level above the production teams. Each one has about a dozen members, including two members from each of the four teams and some members of management. Many of the decisions made by these three committees are reviewed by the management team composed of 15 members of management. The plant manager is above the management team. He has the ultimate authority to review all decisions made by the three committees.

Under the Socio-Tech System, the *Organizational Review Board* (ORB) is charged with monitoring plant

<sup>1</sup> On February 27, 1998, Administrative Law Judge Richard J. Linton issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief. The Labor Policy Association filed a brief amicus curiae.

policies to insure that they are administered consistently among the four teams. The ORB also suggests modifications to plant norms, including hours, layoff procedures, smoking policies, vacations, and all terms and conditions of employment. Decisions of the ORB are in the form of recommendations forwarded to the Management Team or the plant manager. Plant Manager De Young testified that he could not recall a single instance when he overruled the ORB. "I just haven't done it." Further, De Young testified that decisions of the ORB often have been implemented by the time they reach him:

So, usually, by the time the decision is made, everybody in the plant has discussed it so often, it's common knowledge. So, usually, by the time it finally gets to the ORB and the Management Team and I see it, it's something that's been implemented and it's, you know, done.

In addition, the ORB reviews production team recommendations to suspend or discipline a team member. Again, the record shows that the plant manager gives great weight to the recommendation of the ORB. In a case involving an employee who urinated on a plant building, De Young was faced with conflicting disciplinary recommendations from the ORB and the management team. Rejecting the management team's discharge recommendation, De Young approved ORB's suspension recommendation.

Like the other committees, the ORB must operate within established parameters. The record indicates that one of the roles of management is to ensure that the committees do not exceed their delegated authority. For example, when the ORB recommended a layoff procedure that contained a provision for seniority, the management team returned the matter to the ORB with the following comment: "We do not have seniority in this plant." The final version of the layoff policy did not include seniority as an independent factor.

The Socio-Tech System delegates to the *Advancement Certification Board* (ACB) the authority to administer the Respondent's "Pay for Acquired Skills Program." The ACB certifies that employees have advanced to higher skill levels and recommends pay increases to the plant manager. De Young has never overruled a recommendation of the ACB.

The Socio-Tech System delegates to the *Safety Committee* the authority to review production team accident reports and consider the best methods to ensure a safe workplace. The plant manager has never overruled a recommendation of the safety committee. In fact, De Young indicated that he would defer to the safety committee on an issue even if he did not agree with it. Thus,

when asked what he would do if the safety committee wanted more antislip grit on the floors and his examination of the area showed no deficit of the grit, De Young testified:

I mean, you know, if I went back to the Safety Committee and they felt like that wasn't sufficient grit even though I thought it was, I would have more installed because they work there, I don't.

## II. ANALYSIS

By its terms, Section 8(a)(2) provides that it is an unfair labor practice for an employer to dominate or support "any labor organization." Consequently, before a violation of Section 8(a)(2) can be found, the entity involved must be a statutory "labor organization."

One of the required elements for "labor organization" status under Section 2(5) is that the entity "exists for the purpose, in whole or in part, of *dealing with* employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Emphasis added.) The Board has explained that "dealing with" contemplates "a bilateral mechanism involving proposals from the employee committee concerning the subjects listed in Section 2(5), coupled with real or apparent consideration of those proposals by management." *Electromation, Inc.*, 309 NLRB 990, 995 fn. 21 (1992), enf'd. 35 F.3d 1148 (7th Cir. 1994). "That 'bilateral mechanism' ordinarily entails a pattern or practice in which a group of employees, over time, makes proposals to management, [and] management responds to these proposals by acceptance or rejection by word or deed . . . ." *E. I. du Pont & Co.*, 311 NLRB 893, 894 (1993).

*Keeler Brass Co.*, 317 NLRB 1110 (1995), illustrates the concept of "dealing." In that case, an employee grievance committee decided that the company's decision to discharge an employee under its "no-call, no-show" policy was too harsh. The committee recommended that the employee be rehired and that the policy be reexamined. The company considered the committee's proposal, changed the no-call, no-show policy, but decided that the discharge was justified by past practice. The grievance committee then heard additional testimony on the past-practice issue, reversed itself, and denied the grievance. On these facts, the Board found that statutory "dealing" was present with respect to the discharge grievance and the no-call, no-show policy because the committee and the company "went back and forth explaining themselves until an acceptable result was achieved." *Id.* at 1114.

By contrast, the element of "dealing" was absent in *General Foods Corp.*, 231 NLRB 1232 (1977). That case involved a "job enrichment program" designed "to

enlarge the powers and responsibilities of all its rank-and-file employees and to give them certain powers or controls over their job situations which are normally not assigned to manual laborers.” *Id.* at 1232–1233. Employees were divided into four teams. Acting by consensus, the teams made job assignments to individual team members, assigned job rotations, and scheduled overtime. Individual team members also served on ad hoc committees that interviewed job applicants, made safety inspections of the plant, and, within certain limits, set starting and quitting times.

The *General Foods* Board found that “[t]hese are managerial functions being flatly delegated to employees and do not involve any dealing with the employer on a group basis within the meaning of Section 2(5), however expansively that term is applied.” *Id.* at 1235. The decision continued as follows:

While the employer could withdraw the powers delegated to employees to perform these functions on its behalf, the withdrawal of authority would be wholly unilateral on its part just as was Respondent’s original delegation. There was no dealing between employer and employee (or employee group) involved in these matters. These functions were just other assignments of job duties, albeit duties not normally granted to rank-and-file personnel. [*Id.*]

In its subsequent *Electromation* decision, the Board cited *General Foods* for the proposition that there is no “dealing” if the organization’s “purpose is limited to performing essentially a managerial” function. 309 NLRB at 995.

With these principles in mind, we now turn to the issue before us of whether the seven committees exist for the purpose of “dealing with” the Respondent.

The Respondent and the amicus assert that the facts of the instant case resemble those of *General Foods*. We agree. As in *General Foods*, management has delegated to the committees in issue the authority to operate the plant within certain parameters. This is the essence of the Socio-Tech System. As the judge recognized, the Socio-Tech System represents a significant variation on the traditional plant organizational structure where authority is delegated to descending levels of managers who make decisions on an individual basis. Under the Socio-Tech System, authority is delegated to descending levels of committees which make decisions by consensus.

Nevertheless, the two systems have an important element in common and that is that at each level the authority being exercised is unquestionably managerial. With respect to the four production teams, Plant Manager De Young testified, the judge found, and we agree, that the

authority they exercise is comparable to that of the front-line supervisor in the traditional plant setting. Similarly, given De Young’s credited testimony that he has rarely, if ever, overruled one of the recommendations of the ORB, the ACB, or the Safety Committee, it cannot be doubted that each committee exercises as a group authority that in the traditional plant setting would be considered to be supervisory. Therefore, we conclude that the rationale of *General Foods* applies here and that the seven committees are not labor organizations because their purpose is to perform essentially managerial functions, and thus they do not “deal with” the Respondent within the meaning of Section 2(5) of the Act.

In contending otherwise, the General Counsel maintains that because none of the seven committees possess authority that is final and absolute, “dealing” must necessarily be occurring when their recommendations are passed on to the Management Team and the plant manager. Like the judge, we reject this contention. Few, if any, supervisors in a conventional plant possess authority that is final and absolute. At the Respondent’s facility, just as in a more traditional plant, one level of management (e.g., the ORB), acting within its sphere of delegated authority, forwards for review its recommendations to a higher level of authority (e.g., the plant manager). But it would not be accurate to characterize that exchange as “dealing” within the meaning of Section 2(5) of the Act. Rather, what is occurring in the Respondent’s facility is the familiar process of a managerial recommendation making its way up the chain of command. Higher-management review of a recommendation made by lower management cannot be equated to the “dealing” between an employer and a representative of its employees contemplated by the statute. Indeed, it is the fact that the interaction is occurring between two management bodies that distinguishes this case from cases such as *Keeler Brass* and persuades us that the statutory element of dealing is absent.

In sum, the record establishes that the seven committees in issue do not “deal with” management within the meaning of Section 2(5).<sup>2</sup> Rather, the evidence shows that, within their delegated spheres of authority, the seven committees *are* management. For this reason, we affirm the judge’s findings that the seven committees are not statutory labor organizations and that, consequently, the Respondent has not violated Section 8(a)(2) of the Act.<sup>3</sup>

<sup>2</sup> The General Counsel does not contend that “dealing” occurs between the management and nonmanagement members *within* the committees.

<sup>3</sup> In light of our dismissal of the complaint on this ground, we do not reach the issue of whether the Respondent dominated or assisted the

## ORDER

The complaint is dismissed.

*Tamara J. Gant, Esq. (NLRB Region 16), Houston, Texas, for the General Counsel.*

*Gregory P. McGuire, Esq. (Haynsworth, Baldwin, Johnson and Greaves), Greensboro, North Carolina, for Crown Cork.*

*Martin Rodriguez, Rosenberg, Texas, for himself.*

## DECISION

## STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. The issue here is whether certain employee committees are statutory labor organizations. Determination of that issue turns on whether the committees have been “dealing with” Crown Cork within the contemplation of 29 USC 152(5). Finding the answer to be No, I dismiss the complaint.

Under the General Counsel’s interpretation of the statute and the cases, if an employee committee, ostensibly vested with a managerial function, is not fully adjudicative, but has to recommend even some of its decisions to higher management, or revises some based on suggestions or rejections of higher management, then that committee is “dealing with” the employer. By contrast, Crown Cork argues that the law, statutory and decisional, supports the conclusion that a delegated management function means the delegation of that function to the extent it would be delegated to that management level in a “traditional” plant setting, and that it does not mean that the authority delegated to the committee, concerning the committee’s subject matter jurisdiction, must be the ultimate decisional authority of the plant manager, or the CEO, or of the corporation’s board of directors. I agree with Crown Cork’s interpretation.

I presided at this 2-day trial (August 18-19, 1997) in Houston, Texas. Trial was pursuant to the June 30, 1997 Complaint and Notice of Hearing (complaint) issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 16 of the Board. The complaint is based on a charge filed against Crown Cork & Seal Company, Inc. (Crown Cork or Respondent) on October 30, 1996 by Martin Rodriguez, an individual (Rodriguez or Charging Party). In the Government’s complaint, the General Counsel alleges that Crown Cork violated Section 8(a)(1) and (2) of the Act by maintaining, dominating, and rendering aid to eight teams, boards, and committees. These same eight are alleged to be statutory labor organizations. By its answer, Crown Cork admits certain facts, denies that the teams, boards, or committees are statutory labor organizations, and denies violating the Act. The eight organizational groups are: Production Teams A, B, C, and D; the Organizational Review Board; the Advancement Certification Board; the Wage Survey Committee; and the Safety Committee.

The pleadings establish that the Board has both statutory and discretionary jurisdiction over Crown Cork and that Crown Cork is a statutory employer. Aside from allegations that the

employee groups are statutory labor organizations, there is no elected or recognized labor organization representing the employees involved here, nor is there any evidence of any union organizational activity at the plant.

Five witnesses testified before me. The General Counsel called Rich De Young, Crown Cork’s plant manager of the facility involved, Charging Party Rodriguez, and then (2:354) rested.<sup>1</sup> Crown Cork then called Robert Reyes, the plant’s human resources manager, and production technicians Douglas J. Wilson and Paul Goodale, and then (2:416) rested. There was no rebuttal stage.

When the General Counsel rested, Crown Cork moved (2:355) that I dismiss the complaint as to the Wage Survey Committee on the ground the evidence demonstrated that such committee had been disbanded. In light of Plant Manager De Young’s testimony (1:100-101; 2:324) that the committee had not met in “a few years,” that its work had become an administrative function of the Human Resources department, and that the committee had been “disbanded,” I granted (2:359) the motion to dismiss as to the Wage Survey Committee.

On February 20, 1998 the court reporting service supplied a corrected volume 2 of the transcript in order to insert 10 pages of testimony that had been omitted from the first version. In a conference call I held on February 23, 1998 with attorneys for the parties, counsel advised that they would not have to modify or add to their briefs. On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel (who attached a proposed order and notice) and Crown Cork, I make these

## FINDINGS OF FACT

*A. Crown Cork’s Sugar Land Plant*

At its Sugar Land, Texas plant, the facility involved in this proceeding, Crown Cork, a Pennsylvania corporation, manufactures aluminum cans. (Pleadings.) The plant opened in 1984 as one of Continental Can’s many plants. From the beginning, Continental Can utilized a “Socio-Tech” system of employee management of the plant. De Young, then the plant superintendent, was at the plant from the beginning. There was no union activity when Continental Can installed its socio-tech system. (1:29-30; 2:277-278, 330.) Crown Cork took over the plant in 1990. (2:342, Rodriguez.) Crown Cork has continued with essentially the same socio-tech system. (1:88-89.) The plant is identified as Crown Cork’s plant 60, Fort Bend. (2:330-331, 393.) The reference to Fort Bend apparently derives from the fact that Sugar Land is located in Fort Bend County.

Plant Manager De Young testified that the plant employs about 150 employees as, apparently, production and maintenance employees. (1:31.) The plant is valued at \$80 million, including, apparently, equipment worth some \$30 million. (1:109.)

<sup>1</sup> References to the two-volume transcript of testimony are by volume and page. Exhibits are designated GCX for the General Counsel’s and JX for the single joint exhibit. No other exhibits were offered.

committees. We also express no view on the question whether the individuals serving on the committees are supervisors within the meaning of Sec. 2(11) of the Act.

*B. Overview*

The facts essentially are undisputed, and I credit each witness. Although Crown Cork questions the credibility of Charging Party Rodriguez in limited respects, and the General Counsel implicitly attacks the claims of Plant Manager De Young and Human Resources Manager Reyes, the dispute generally is not over whether someone said, saw, or did something at a meeting or elsewhere. As I discuss in a moment, Rodriguez has a different perception and interpretation of a specific event he describes. Additionally, the parties differ in how they interpret and characterize the events in this case. Their differing views of the events lead them to different legal conclusions.

As a foundation for the testimony of the witnesses, the parties offered a six-page document, identified and received as Joint Exhibit 1. (1:6, 9.) In 29 numbered paragraphs, the document describes many of the teams, boards, and committees which exist at the plant. As there is only one joint exhibit, any citation to a fact paragraph in this decision will substitute the paragraph number for the exhibit number, as in JX 3, meaning JX 1 paragraph 3. The bulk of the record testimony came from Plant Manager De Young. (1:28 to 2:333.) The parties stipulated (2:365-368) that the testimony of Human Resources Manager Reyes would track that of Plant Manager De Young respecting the authority and functioning of the four production teams. To identify the teams and terms, I now quote from the joint exhibit received in evidence.

1. [Some 15 persons are named as supervisors. Philip Oldmixon, team leader of B Team, is added at 2:340.]

2. Hourly-paid members of the A, B, C, and D Production Teams, the Organizational Review Board (ORB), the Advancement Certification Board (ACB) and the Safety Committee are paid by Respondent for time spent in meetings of the teams, boards and committees.

3. Respondent provides a meeting room for the teams, boards and committees to conduct meetings.

4. To the very limited extent needed by the teams, boards and committees, Respondent supplies them with office supplies and other tools and equipment, and secretarial assistance upon request.

5. [Pertains to business records under subpoena.]

6. The A, B, C, and D production teams work 12-hour shifts on a four-days-on, four-days-off basis. The A and B teams work in tandem, and the C and D teams work in tandem, one team on day shift (7:00 a.m.–7:00 p.m.) and one team on night shift (7:00 p.m.–7:00 a.m.).

7. Each production team is made up of thirty three (33) team members; one team leader and thirty two (32) production technicians. Two (2) of the production technicians also serve in the roles of team coordinators.

8. The Organizational Review Board (ORB) is composed on two (2) members from the A, B, C, and D teams, one (1) member from the PM&R Team, one (1) team leader, one (1) management team member and the Human Resources Manager.

9. The Advancement Certification Board (ACB) is composed of (2) members from each of the A, B, C, and D teams, one (1) member from the PM&R team, one (1)

team leader, one (1) management team member and the Human Resources Manager.

10. The Safety Committee is composed of (2) members from the A, B, C, and D teams, one (1) member from the PM&R team, one (1) team leader, one (1) management team member and the Safety Coordinator.

11. The Fort Bend plant was opened in 1984 by a predecessor company of Respondent's. The system of teams, boards, and committees, known as the "Socio-Tech" system, was instituted in 1984 when the plant was opened.

12. The Fort Bend plant manufactures aluminum beverage cans, primarily for a major beer manufacturer. The plant currently produces about 2 billion cans a year.

13. In addition to the A, B, C, and D production teams, there are three (3) "support" teams: the Preventive Maintenance & Repair Team (PM&R), the Administrative Team and the Management Team. None of these teams is alleged as unlawful in the Complaint.

14. The PM&R Team provides maintenance and repair services, technical expertise, parts, tooling, equipment, and other support services such as water treatment, etc. to support the production teams with the plant's technical systems. The PM&R team is composed of twelve (1) production technicians and five (5) management employees.

15. [Describes the Administrative Team.]

16. The Management Team provides all the resources needed to accomplish the plant's mission, goals, and objectives. The Management Team also provides leadership, planning, organizing, facilitation, training and development, technical assistance, boundary management, management of the social environment & culture of the socio-tech system, and other management services. The Management Team is composed of 15 management employees.

17. There is a Quality Improvement Team (QIT). The QIT is not alleged as unlawful in the Complaint.

18. [Lengthy description of the QIT's function.]

19. There is a Statistical Process Control (SPC) Implementation Team. The SPC is not alleged as unlawful in the Complaint.

20. [Lengthy description of the SPC's function.]

21. There is a Housekeeping Committee. The Housekeeping Committee is not alleged as unlawful in the Complaint.

22. [Lengthy description of the Housekeeping Committee's function.]

23. There are also special purpose and ad hoc committees. These committees are not alleged as unlawful in the Complaint.

24. The special purpose or ad-hoc committees at the plant or team level are the Hiring Committee, the Gain-sharing Committee, Performance Appraisal Committees (PACs), Recreation Committee, Corrective Action Committees (CATs), and there may be other committees created as special needs arise. These special purpose committees are composed of members from the teams and meet regularly during their duration. Some of these com-

mittees may be activated once a year as the need arises and their duration is for a few months. Still others like the CATs are activated only for a specific mission or purpose and their duration may be months. Once the mission is completed, the CAT is completely dissolved.

The remaining paragraphs, JX 25 (Hiring Committee), JX 26 (Recreation Committee), JX 27 (Gainsharing Committee), JX 28 (PAC), and JX 29 (CATs), give lengthy descriptions of the functions of the named committees.

Portions of the testimony and of various exhibits describe Crown Cork's Socio-Tech System (STS). One 35-page document (GCX 3, "A Glimpse Inside Fort Bend") is a training guide, apparently, for new employees. Perhaps one way to describe STS is that it is a plant culture in which the traditional delegation of managerial authority to descending levels of individual managers (where, at each level, decision making, within the range of authority delegated, is authoritarian) has been shifted from individual managers at each level to groups at each level where decision making, covering all aspects of work and life at the plant, is by consensus. At Crown Cork's Sugar Land plant, the groups are the various teams, boards, and committees (or, collectively, "teams"). Every employee is a member of at least one team. (De Young, 2:280.)

On the production teams, the Team Leader is a member of management. (1:35; 2:283, 302, De Young.) In the traditional plant setting, a Crown Cork team leader apparently would be the first-line supervisor. At Crown Cork, as De Young asserts, the team itself is the first-line supervisor. (2:283.) The production teams also have coordinators who are not members of management and function much like leadpersons in a traditional plant setting. (2:300-302.) When the teams have their meetings and make decisions, the team leaders participate as members of the team, but they have no greater authority than any other member of the team, nor do they have veto authority nor authority to unilaterally change the topic of discussion. (2:299, De Young.)

Although Charging Party Rodriguez appears to have a different perception, the example he gives, of B Team Leader Oldmixon's saying that participation for certain work had to be 80 percent, rather than the 75 percent recommended by the team (GCX 24 at 1), appears to have been nothing more than the next higher level, at the ORB, sending the recommendation back for consideration of participation at 80 percent. The B Team reconsidered and decided on 80 percent. (GCX 24 at 3; 2:335-341.) Moreover, Production Technicians Wilson (2:399) and Goodale (2:414-416) confirm De Young's testimony that the team leaders have no veto authority. As Goodale explains, while some employees may have that (erroneous) perception, other experienced team members correct that misimpression on the spot. (2:414-416.)<sup>2</sup>

In meetings of the ORB, ACB, and the Safety Committee, there are persons who serve in the roles of conveners, facilitators, and recorders. (2:395, Wilson.) Conveners, who may be nonmanagement, convene the meetings and keep them moving

and on agenda. (1:104, 212; 2:313-314, 395-396, 409-410.) The convener uses a Crown Cork checklist. (1:105; GCX 6.)

Facilitators are members of management, are not members of the team, but attend meetings in the role of passing on information from management and, apparently, offering suggestions or ideas in an effort to help keep meetings moving. (1:35-38.)

As the name suggests, and as reflected on GCX 6, recorders serve as a meeting's recording secretary in taking the minutes. (1:105; 2:410.)

Under what traditionally might be described as an employee or personnel policies handbook or manual, Crown Cork's 70-page "Good Practices Guidebook" (GCX 2), outlines company policy on everything from "Attendance Norms" to "Total Quality Performance." (GCX 2 at 3, as numbered at trial, such numbering differing from the later internal numbering.)

As provided in Crown Cork's Guidebook, the production teams deal with any issue that arises. (GCX 2 at 35-36.) As De Young describes, the teams "decide and do" on a wide range of issues, including production, quality, training, attendance, safety, maintenance, and discipline short of suspension or discharge. (1:59-66; 2:280-299.) Discipline is handled under Crown Cork's "Justice" system. (1:43; GCX 2 at 20.) If a team feels that a member's work, personal, or safety conduct is not within team norms, then the team discusses it with the member [akin, apparently, to a supervisor's counseling elsewhere], or, if necessary, decides on a "social contract" for the erring member. A "social contract," oral for minor matters and progressing to written if things get more serious, is designed to modify the member's behavior. If matters progress to the point that the team decides that a suspension or discharge is the solution of the problem, that decision must be in the form of a recommendation to the ORB. The ORB's decision is reviewed by the Management Team, whose recommendation goes to Plant Manager De Young. (1:44-50; 2:288-292; GCX 2 at 22, 24.)

The ORB's mandate is to monitor and interpret adherence to the norms for "appropriate consistency," and to suggest modification of the norms. The ORB makes no final decisions, but acts "as a recommending body to the Plant Manager." (GCX 2 at 26; 1:50-56, 80-82, De Young.) "The ORB reviews and makes sure that all the policies in the plant are fairly administered in the plant." (2:290, De Young.) Management members of the ORB have no more authority within the meetings than the other members. (2:318-319, De Young; 2:374, Reyes; 2:399, Wilson.) De Young testified that he could not recall a single instance of his having overruled a decision made by the ORB. "I just haven't done it." (2:321.) In fact, in a case involving an employee (Alberto Maglasang) who urinated on one of the buildings at the plant, the Management Team, disagreeing with the ORB's recommendation of suspension (as A Team had recommended on April 12, 1997), declared that the employee should be fired. Rejecting the Management Team's recommendation, De Young approved ORB's suspension decision. (1:115-116, 155-157, 229-230, 270-271; 2:321; GCXs 12, 37, 86, 110.) As De Young phrases it, the ORB is similar to the plant superintendent in a traditional plant. (1:157.)

Training and advancement are two of the many matters handled by the production teams. (1:60-63.) The ACB also monitors and tracks the progress of all skill level advancements and

<sup>2</sup> I correct 2:380 line 9 to read, "Martin Rodriguez."

recommends pay increases to the Plant Manager. (1:95-99; 2:308-312; GCX 3 at 19.) Management members of the ACB have no more authority than the nonmanagement members. (2:313, De Young.)

Although the production teams handle plant accidents, including correction of the problem (2:292-294), the Safety Committee also reviews production team investigations of accidents at the plant, and any recommendations of the team, and considers the best methods to ensure a safe workplace. Its recommendations go first through the Management Team and then to the plant manager. (1:64-70, 183-184.)

Many of the recommendations made by the ORB, the ACB, as well as those of the Safety Committee, go to the Management Team. (1:72-75; GCX 2 at 37-38.)

### C. Discussion

On brief the General Counsel cites several events from the evidence as support for the Government's contention that the teams, both internally and in relation to plant management generally, are "dealing with" management—and therefore are statutory labor organizations.<sup>3</sup> A few examples will illustrate the nature of the Government's contention.

Respecting the production teams, the General Counsel first cites, presumably as a strong indicator of "dealing with," the discipline of A Team member Pat McGathon concerning an issue of quality. Because A Team could not agree on a single recommendation, on December 4, 1996 it submitted two recommendations, one for a 2-week suspension and one for discharge. (1:106-108; GCX 7.) The next day ORB adopted the discharge recommendation (1:108; GCXs 8, 81), the Management Team agreed (1:225, 267, De Young; GCX 108 at 1), and thereafter McGathon was discharged (1:225, 268).

"In this case," the General Counsel writes (Brief at 8), "as in all the incidents described below, it is clear that the team did not have the authority to act unilaterally. Rather, the team made a recommendation which passed through the ORB to the Management Team. Absent agreement from the Management Team, McGathon could not have been discharged."

Take first the Government's last sentence. That is wrong. As we have seen from De Young's 1997 handling of the conflicting recommendations from ORB and Management Team regarding urinating A Team member Maglasang, De Young sided with ORB rather than with Management Team. Aside from that discrepancy, the Government's analysis is flawed. This is so because that analysis overlooks the fact that, in recommending a suspension or discharge, the production teams, whose authority admittedly is expressly limited to a recommendation on such matters, is acting just as a first-line supervisor does (as De Young observes, 2:289) in a traditional plant setting. And when ORB recommends, its is not "dealing with," but simply one management level (similar to that of a plant superintendent) recommending to a higher management level.

Similarly, when either a production team reconsiders a matter sent back for such reconsideration by ORB, or ORB does

likewise on a matter returned from Management Team, the separate groups are merely acting within the spheres of their delegated authority. Very few supervisors in any traditional plant can unilaterally grant pay raises or fire employees. They may effectively recommend those actions, however, and that would be one reason they are statutory supervisors. The point is, the production teams, ORB, and the Safety Committee are no less a part of management because their delegated authority on such matters is limited to recommending rather than commanding.

A different example yields the same result. This is the incident in which the Management Team returned to ORB a recommended layoff procedure, which contained a provision for seniority, with Human Resources Manager Reyes' comment, "We do not have seniority in this plant. Take back to ORB, have statement removed. Average for time in plant." (1:215, 243-245; GCXs 98, 99.<sup>4</sup>) ORB apparently did so on January 16, 1997. (1:248; GCX 100.) The final version (GCX 107) of the "Layoff Policies and Procedures," approved by De Young on January 24, 1997 (1:257; 2:315-317), does not contain "seniority" as an independent factor. The second introductory paragraph of the layoff policy reads (GCX 107 at 1):

The Human Resources Manager will ensure that the layoff policies, procedures, processes, and guidelines are in conformance and/or compliance with Corporate Human Resources policies and all applicable laws and regulations, such as: Worker Adjustment and Retaining Notification Act (WARN). Further, he will ensure that the layoff policies and procedures are consistent with the socio-tech principles and culture of the Fort Bend Plant.

From the foregoing layoff incident the General Counsel appears to make two arguments. First, when it meets with any of the teams, on which employees are members, management (especially corporate management) dictates policy. Second, wholly aside from the dictating aspect, the back and forth trips between teams (such as ORB to Management Team and Management Team back to ORB) demonstrates that the whole process is nothing other than the negotiation process between a labor organization (ORB) and its management counterpart (Management Team) at the bargaining table. And the same holds true for similar incidents with ACB and the Safety Committee.

Respecting the General Counsel's point about policy, of course corporate management dictates policy. Human Resources Manager Reyes acknowledges that it is management's function to see that plant policies are consistent with corporate policy and any pertinent laws. (2:362, 382.) All this means is that top management tells lower management how policy statements must read.

The real question is whether the various teams (teams, committees, and boards) are part of management as, in Crown Cork's contention (Brief at 2, 25, 29, 34, 37, 38), a "committee of the whole,"<sup>5</sup> or whether they are not managerial in nature because they are not serving essentially "in a managerial or

<sup>3</sup> Oddly, Crown Cork mentions only a couple of these events, yet devotes nearly 10 pages to discussing policy considerations better addressed to the Board or to Congress.

<sup>4</sup> I correct 1:243 line 11 to substitute "GC 98" for "GC 93."

<sup>5</sup> See *General Foods Corp.*, 231 NLRB 1232, 1234 (1977).

adjudicative” capacity.<sup>6</sup> We now meet ourselves coming back in a circle to the General Counsel’s contention that this result obtains because the teams do not finally resolve matters which come before them. That argument disregards the fact, which I find, that Crown Cork has delegated traditional management functions to the entire workforce, divided into groups at different levels.

Finding that the teams alleged to be statutory labor organizations are, instead, levels of managerial groups, with Crown Cork’s entire work force a “committee of the whole,” and that, therefore, the employee groups specified in the complaint have not been “dealing with” management, as alleged, I shall dismiss the complaint.

#### CONCLUSIONS OF LAW

Because the employee/management committees here perform only a managerial function, they are not statutory labor

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<sup>6</sup> See *Electromation*, 309 NLRB 990, 995 (1992), *enfd.* 35 F.3d 1148 (7th Cir. 1994).

organizations “dealing with” Crown Cork, and therefore Crown Cork has not, as alleged, violated Section 8(a)(2) and (1) of the Act by their activities. Aside from whether any financial support of the committees would have been mere incidental help, and therefore lawful, had the committees been found to be statutory labor organizations, the finding of no labor organization status requires the conclusion that there has not been, as independently alleged, unlawful assistance in violation of Section 8(a)(1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

#### ORDER

The complaint is dismissed.

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<sup>7</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.